

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

January 10, 1985

The third meeting of the Senate Judiciary Committee was called to order at 10:05 a.m. on January 10, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Chet Blaylock, who was excused to attend a funeral.

CONSIDERATION OF SB 27: Senator Kermit Daniels, sponsor of SB 27, explained that this is a bill which has been introduced at the request of the Joint Interim Subcommittee which would require training sessions and orientation courses for clerks of district court, deputy clerks of district court, and persons who perform duties similar to those of the clerk of district court for justices', municipal, and city courts. It was the feeling of the clerks who attended the sessions of Subcommittee No. 3 that this will enable them to perform their duties more efficiently.

PROPOSERS: None.

OPPOSERS: None.

FURTHER TESTIMONY: Mike Abley, Administrator of the Montana Supreme Court, advised the committee that he has been instructed by the court to assume a position of neutrality with respect to this bill. The court is not opposed to this bill. If it is the wish of the legislature that the court perform this function, they will be happy to administer it. Mr. Abley informed the committee he has a fiscal note pertaining to this bill.

QUESTIONS FROM THE COMMITTEE: Senator Shaw asked Mr. Abley to share the findings of the fiscal note with the committee. Mr. Abley said the fiscal impact will be \$12,000 - \$27,000. They believe they can put on the proposed training session for approximately \$12,000. This figure is based on their experience in presenting other training sessions of a similar nature. If the state must assume the full cost of travel and per diem for those in attendance at the training session, the cost will be approximately \$27,000. If the clerks of the lower courts are included, Mr. Abley does not believe the cost will increase substantially. Senator Mazurek questioned whether the Supreme Court presently had the money in its budget to absorb the cost of this program. Mr. Abley stated the court did not. Senator Crippen expressed a concern with page

2, subparagraph (3), of the introduced copy of the bill, stating "A clerk or deputy who fails to attend the orientation course or an annual training session without proper excuse is disqualified from office." Chairman Mazurek stated that Gordon Morris and a representative from the justice courts were in attendance at the hearing and asked if either of them had a response to Senator Crippen's question. Mr. Morris, on behalf of the Montana Association of Counties, stated the association supports the concept of the bill from the standpoint of the county court clerks throughout the state. Senator Shaw stated that in view of the fact we are looking at a deficit now, he questioned whether the proposed training would increase the efficiency of these people involved \$27,000 in order to justify the bill. Mr. Morris felt it would. Senator Crippen requested clarification as to whether Mr. Morris were speaking on behalf of the clerks of court. Mr. Morris indicated he was speaking on behalf of the county commissioners. He was surprised there was not a representative of the clerks of court here today as he had assumed there would be. Senator Pinsoneault addressed a question to Mr. Abley as to whether there is some training which presently takes place each year for the judges. He felt it would make sense to send the clerks along with the judges and justices they are working for to take the place of this bill. Mr. Abley indicated they do some of that now. They allow some of the lower court clerks to attend these sessions as far as money is available and as many slots as are open. Senator Mazurek asked Mr. Abley if he felt it would be necessary to do this training annually or would a one-time orientation after election be sufficient. Mr. Abley felt for the first year or two it would need to be done annually and, thereafter, you could possibly get by with every election in view of the fact you still have a substantial turning over with retirements and deaths. Senator Mazurek questioned whether it were necessary to train every deputy or could you rely on the clerks to train their own personnel. Mr. Abley stated many clerks do not have personnel.

CLOSING STATEMENT: None.

The hearing on SB 27 was then closed.

Chairman Mazurek then turned the chair over to Vice Chairman Daniels in order that he might attend a Senate Business and Industry Committee meeting in which he had a bill up for hearing.


FURTHER CONSIDERATION OF SB 30: Senator Towe requested that we try to get fiscal information on SB 30.

FURTHER CONSIDERATION OF SB 5: Vice Chairman Daniels asked that the staff researcher, Greg Petesch, present to the committee his findings as to the number of sections which would be involved in this bill. Mr. Petesch presented the committee with a rather extensive list (see Exhibit 1) of sections not codified and considered redundant. He

indicated that most items not codified and considered redundant are subsections or portions of sections. Mr. Petesch explained that this list contains only those sections which have been specifically designated as redundant. Senator Towe requested that in view of the fact this list is rather extensive, Mr. Petesch call this matter to code commissioner, Diana Dowling's, attention and see what can be done.

FURTHER CONSIDERATION OF SB 24 AND SB 26: Mr. Petesch provided the committee with the information requested on these bills regarding the enabling act. He stated he looked into the enabling act to see if public auction were required if school lands were sold. His research indicated yes, and a copy of the enabling act was distributed to the committee (see Exhibit 2). Mr. Petesch further stated his research indicated that if school lands were exchanged, the lands acquired would go into the school land trust in accordance with Section 77-2-217, MCA, a copy of which statute was distributed to the committee (see Exhibit 3). The constitution provides that the income from trust fund lands cannot be diminished, and that statute implements that provision. Senator Towe asked Mr. Petesch if it were his conclusion that with that provision in the enabling act requiring bidding at public auction that the suggestion made by the tribes is not possible and we simply cannot do it without an act of congress. Mr. Petesch's response was affirmative.

There being no further business to come before the meeting, a motion was made to adjourn the meeting at 10:30 a.m.

  
Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 01/10/85

NAME	PRESENT	ABSENT	EXCUSED --
Senator Chet Blaylock			Funeral X
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		



# Montana Code Annotated

RCM's

not Codified red. w/....

1-319

16-261

3-228.1 (6)

16-262

3-310 (1)

16-519

3-3501 (5)

16-907 (part)

4-4-109

16-1003

8-101 (1)

16-1021

8-201.1

16-1117

8-901

16-1157

8-902

16-2405 (part)

10-1205

16-2406 (part)

10-1313 (Repetitive)

16-2412

11-725 (part)

16-2427

11-725 (part)

16-2917 (2)

11-811

16-3704 (part)

11-986 (part)

16-4521 (part)

11-1402

16-5115.11 (1)

11-1938

19-110

11-2003 (part)

23-3012 (part)

11-2237 (part)

23-3719 (1)

11-3318 (part)

23-4109 (last part (2))

11-3804 (part)

23-4116 (3)

11-3907 (part (h))

23-4776 (purpos)

16-240

25-113

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE

01/08/85

25-222

25-602 (part)

26-107 (last part)

26-1007

26-1802 (1) (2)

32-1126 (5)

32-2102 (b)

32-2104 (b)

32-2111 (a)

32-2111 (d)

32-2142 (part (1))

32-2807

32-4002 (part)

34-303 (part)

35-109 (part)

35-135 (part)

35-136 (part)

35-143 (part)

36-205

37-111 (1)

40-4759 (1)

40-5502 (1) (2)

40-5509 (b)

40-5705 (2)

40-5805 (3)

40-5901 (4)

41-106

41-1433 (part)

41-1601

46-1917

46-2310 (part (2))

53-107 (Last para)

53-418 (7)

53-1022 (2)

59-512 (part)

66-412 (2)

66-2350 (part (3))

66-2402 (1)

66-3906 (part (2))

69-1508 (part)

69-1909 (part)

70-702 (2)

72-101.1 (part (2))

72-105 (part)

72-153

72-160

72-170

72-171

75-6208 (5) (d)

75-6416 (part)

75-8301

76-108 part

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 011085

BILL NO. 585

81-2602 (2)(3)

81-2706

82-110 (part (6))

82-901

82-1310

82-1918 (2)

82-4516 (4)

84-402 (part (3))

84-708.1 (1)

84-1401 (part)

84-4942 (a)

84-4955

84-5606.11

84-6881 (1) thru (3)

84-6909

89-132.1 (6)

89-1416 (part)

89-2911 (part)

89-2930

93-315 (part)

93-403 (part)

93-403 (part)

93-902 (part)

93-1307

93-4502 (part)

93-6101 (part)

93-6921 (part)

93-7202

93-7714

93-1401-3

95-202

95-1401 (part)

95-1401 part 1

95-3309

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 01085



at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, non-mineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased lands, interest on deferred payments on lands sold, interest on funds arising from these lands, and all other actual income, shall be available for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 011085

BILL NO. SB321 & SB326

proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange, as authorized by 77-2-211.

History: En. Sec. 4, Ch. 180, L. 1931; re-en. Sec. 1995.4, R.C.M. 1935; amd. Sec. 102, Ch. 428, L. 1973; R.C.M. 1947, 81-2204(2).

**77-2-217. Status of exchanged lands.** All lands taken in exchange under 77-2-211 through 77-2-216 for lands granted by the United States to the state of Montana prior to July 1, 1931, shall be subject to the same restrictions, limitations, and provisions as the lands granted by the United States are now subject to. All lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by The Enabling Act of the state of Montana or the other grant from the United States.

History: En. Sec. 6, Ch. 180, L. 1931; re-en. Sec. 1995.6, R.C.M. 1935; R.C.M. 1947, 81-2206(part).

#### Cross-References

Exchange of lands with United States,  
77-2-201.

## Part 3

### Sales

**77-2-301. Sales of state land under board control.** The board is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. As a general rule, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families.

History: En. Sec. 70, Ch. 60, L. 1927; re-en. Sec. 1805.70, R.C.M. 1935; R.C.M. 1947, 81-907.

#### Cross-References

Sale of state lands, Art. X, sec. 11, Mont. Const.

Public sales of state lands, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).  
Authority of Board — sales, 77-1-204.

**77-2-302. Disposition of former institutions.** Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days' public notice of the terms of the proposed disposal shall have been given.

History: En. 81-907.1 by Sec. 1, Ch. 410, L. 1977; R.C.M. 1947, 81-907.1.

#### Cross-References

Disposition of state land — full market value, Art. X, sec. 11, Mont. Const.

Disposition of state lands — public sale, The Enabling Act, sec. 11 (see anno. vol. 1, Federal Materials).

Glendive nursing home facility — use or disposition, 53-20-505.

Who may purchase, 77-2-306.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 011085